

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

DANA BADKE, an infant over the age of fourteen  
(14) years, by her father and natural guardian,  
JOHN BADKE and JOHN BADKE, Individually,  
V.

SUMMONS IN A CIVIL ACTION

MARVIN WEIMAN,

CASE NUMBER:

**08 CV 0210**

JUDGE ROBINSON

TO: (Name and address of Defendant)

Marvin Weiman  
131 Westhampton Drive  
Thornhill, ON L4J7J8

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Feldman, Kramer & Monaco, PC  
Jason F. Zimmerman, Esq.  
330 Motor Parkway  
Hauppauge, NY 11788  
(631) 231-1450 Ext. 218

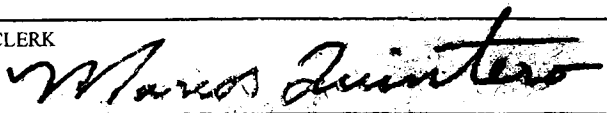
an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

**JAN 10 2008**

CLERK

DATE

  
(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>		DATE
NAME OF SERVER ( <i>PRINT</i> )		TITLE
Check one box below to indicate appropriate method of service		
<div><input type="checkbox"/> Served personally upon the defendant. Place where served:</div> <div><input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:</div> <div><input type="checkbox"/> Returned unexecuted:</div> <div><input type="checkbox"/> Other (specify):</div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date _____ Signature of Server _____</p> <p>_____ Address of Server _____</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

JS 44C/SDNY  
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS Dana Badke, an infant by her father, John Badke DEFENDANTS Marven Weiman

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) ATTORNEYS (IF KNOWN)  
Feldman, Kramer & Monaco, PC by Jason F. Zimmerman, Unknown  
Esq., 330 Motor Parkway, Hauppauge, NY 11788 (631)  
221 1450 Ext 212

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
Arises under federal jurisdiction as Defendant, Marven Weiman, is a citizen of a foreign country, Canada.

Has this or a similar case been previously filed in SDNY at any time? No [X] Yes? [ ] Judge Previously Assigned

If yes, was this case Vol [ ] Invol. [ ] Dismissed. No [ ] Yes [ ] If yes, give date & Case No.

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

TORTS			ACTIONS UNDER STATUTES		
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY -	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 400 STATE
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT	MED MALPRACTICE	[ ] 620 FOOD & DRUG	28 USC 158	REAPPORTIONMENT
[ ] 130 MILLER ACT	LIABILITY	[ ] 365 PERSONAL INJURY	[ ] 625 DRUG RELATED	[ ] 423 WITHDRAWAL	[ ] 410 ANTITRUST
[ ] 140 NEGOTIABLE	[ ] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	SEIZURE OF	28 USC 157	[ ] 430 BANKS & BANKING
INSTRUMENT	SLANDER	[ ] 368 ASBESTOS PERSONAL	PROPERTY		[ ] 450 COMMERCE/ICC
[ ] 150 RECOVERY OF	[ ] 330 FEDERAL	INJURY PRODUCT	21 USC 881	PROPERTY RIGHTS	RATES/ETC
OVERPAYMENT &	EMPLOYERS'	LIABILITY	[ ] 630 LIQUOR LAWS		[ ] 460 DEPORTATION
ENFORCEMENT OF	LIABILITY		[ ] 640 RR & TRUCK		[ ] 470 RACKETEER INFLU-
JUDGMENT	[ ] 340 MARINE	PERSONAL PROPERTY	[ ] 650 AIRLINE REGS	[ ] 820 COPYRIGHTS	ENCED & CORRUPT
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT		[ ] 660 OCCUPATIONAL	[ ] 830 PATENT	ORGANIZATION ACT
[ ] 152 RECOVERY OF	LIABILITY	[ ] 370 OTHER FRAUD	[ ] 690 OTHER	[ ] 840 TRADEMARK	(RICO)
DEFAULTED	[ ] 350 MOTOR VEHICLE	[ ] 371 TRUTH IN LENDING		SOCIAL SECURITY	[ ] 480 CONSUMER CREDIT
STUDENT LOANS	[ ] 355 MOTOR VEHICLE	[ ] 380 OTHER PERSONAL	LABOR		[ ] 490 CABLE/SATELLITE TV
(EXCL VETERANS)	PRODUCT LIABILITY	[ ] 385 PROPERTY DAMAGE		[ ] 861 MIA (1395FF)	[ ] 810 SELECTIVE SERVICE
[ ] 153 RECOVERY OF	[ ] 360 OTHER PERSONAL	PRODUCT LIABILITY	[ ] 710 FAIR LABOR	[ ] 862 BLACK LUNG (923)	[ ] 850 SECURITIES/
OVERPAYMENT OF	INJURY		STANDARDS ACT	[ ] 863 DIWC (405(g))	COMMODITIES/
VETERANS BENEFITS			[ ] 720 LABOR/MGMT	[ ] 863 DIWW (405(g))	EXCHANGE
[ ] 160 STOCKHOLDERS SUITS			RELATIONS	[ ] 864 SSID TITLE XVI	[ ] 875 CUSTOMER
[ ] 190 OTHER CONTRACT			LABOR/MGMT	[ ] 865 RSI (405(g))	CHALLENGE
[ ] 195 CONTRACT PRODUCT			REPORTING &		12 USC 3410
LIABILITY			DISCLOSURE ACT	FEDERAL TAX SUITS	[ ] 891 AGRICULTURE ACTS
[ ] 196 FRANCHISE			[ ] 740 RAILWAY LABOR ACT	[ ] 870 TAXES	[ ] 892 ECONOMIC
	ACTIONS UNDER STATUTES		[ ] 790 OTHER LABOR	[ ] 871 IRS-THIRD PARTY	STABILIZATION ACT
	CIVIL RIGHTS	PRISONER PETITIONS	LITIGATION	20 USC 7609	[ ] 893 ENVIRONMENTAL
[ ] 210 LAND CONDEMNATION	[ ] 441 VOTING	[ ] 510 MOTIONS TO	[ ] 791 EMPL RET INC		MATTERS
[ ] 220 FORECLOSURE	[ ] 442 EMPLOYMENT	VACATE SENTENCE	SECURITY ACT		[ ] 894 ENERGY
[ ] 230 RENT LEASE &	[ ] 443 HOUSING	28 USC 2255			ALLOCATION ACT
EJECTMENT	ACCOMMODATIONS	[ ] 530 HABEAS CORPUS			[ ] 895 FREEDOM OF
[ ] 240 TORTS TO LAND	[ ] 444 WELFARE	[ ] 535 DEATH PENALTY			INFORMATION ACT
[ ] 246 TORT PRODUCT	[ ] 445 AMERICANS WITH	[ ] 540 MANDAMUS & OTHER			[ ] 900 APPEAL OF FEE
LIABILITY	DISABILITIES -	[ ] 550 CIVIL RIGHTS			DETERMINATION
[ ] 290 ALL OTHER	EMPLOYMENT	[ ] 555 PRISON CONDITION			UNDER EQUAL ACCESS
REAL PROPERTY	[ ] 446 AMERICANS WITH				TO JUSTICE
	DISABILITIES -OTHER				[ ] 950 CONSTITUTIONALITY
	[ ] 440 OTHER CIVIL RIGHTS				OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:  
DEMAND \$ 1,500,000.00 OTHER JUDGE DOCKET NUMBER

Check YES only if demanded in complaint  
JURY DEMAND: [X] YES [ ] NO NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
- ☐ 2a. Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from (Specify District)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court  
AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
- ☐ 2 U.S. DEFENDANT
- ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF			CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF			INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF		
		<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1			<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3			<input type="checkbox"/> 5	<input type="checkbox"/> 5
CITIZEN OF ANOTHER STATE		<input type="checkbox"/> 2	<input type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE		<input type="checkbox"/> 4	<input type="checkbox"/> 4	FOREIGN NATION		<input type="checkbox"/> 6	<input type="checkbox"/> 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Dana Badke, an infant by her father, John Badke  
102 Lolly Lane East  
Centereach, NY 11720

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Marven Weiman  
131 Westhampton Drive  
Thornhil, ON L4J7J8

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  
(DO NOT check either box if this a PRISONER PETITION.)

☒ WHITE PLAINS

☐ FOLEY SQUARE

DATE 1-3-08 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO

☒ YES (DATE ADMITTED Mo. \_\_\_\_\_ Yr. \_\_\_\_\_)

RECEIPT #

Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE ROBINSON

-----X  
DANA BADKE, an infant under the age of fourteen (14)  
years by her father and natural guardian, JOHN BADKE and  
JOHN BADKE, Individually,

COMPLAINT IN A CIVIL  
ACTION

Plaintiffs,

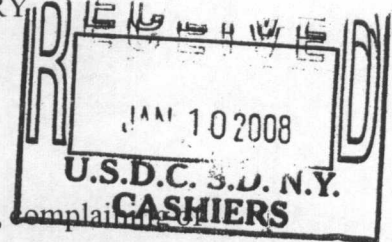
CV. Action No. **08 CV 0210**

-against-

MARVEN WEIMAN,

PLAINTIFFS DEMAND  
TRIAL BY JURY

Defendant.  
-----X



Plaintiffs, by their attorneys, **FELDMAN, KRAMER & MONACO, P.C.**, complain

the Defendant, as and for their Complaint in a Civil Action alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiffs **DANA BADKE** and **JOHN BADKE** are citizens of the State of New York within the meaning of 28 U.S.C. 1332 (a) (1).
2. Defendant **MAVEN WEIMAN** is a citizen of the Country of Canada within the meaning of 28 U.S.C. 1332 (a) (2).
3. This Court has venue to hear this action pursuant to 28 U.S.C. 1391(a).

**FIRST CLAIM**

4. That on Friday, June 1, 2007, at approximately 4:08 PM on Rt. 25A, 100 feet East of Horseblock Road in the Town of Centereach, Suffolk County, State of New York, a 2006 Chevrolet motor vehicle (bearing license plate number AKLD206) owned and operated by Defendant **MARVEN WEIMAN** struck ("car accident") a 2002 Mercury motor vehicle (with license plate number OZD8769) being operated by infant Plaintiff **DANA BADKE** and owned by Plaintiff **JOHN BADKE**.



5. The car accident by and between the Chevrolet and Mercury on June 1, 2007 was by reason of the negligence of the Defendant **MARVEN WEIMAN** in the ownership, operation, maintenance and control of the Chevrolet.

6. The negligence of Defendant **MARVEN WEIMAN** in the ownership, operation, maintenance and control of the Chevrolet consisted of inter alia, failing to yield the right-of-way, failing to avoid striking the Mercury in the rear when the Mercury was stopped; failing to keep a proper look out; operating at an unsafe speed; failing to operate the vehicle safely in view of traffic condition then and there prevailing; failing to leave proper distance between the Chevrolet and Mercury while following the Mercury on the highway; failing to give warning by appropriate use of horn; failing to keep proper lookout; failing to maintain the automobile in good and safe condition; failing to make use of proper turn signals.

7. The negligence of the Defendant **MARVEN WEIMAN** in his ownership, operation and maintenance and control of the Mercury was the proximate cause of the serious painful disabling personal injuries with longstanding permanent consequences sustained by the infant Plaintiff **DANA BADKE** which injuries are "serious" within the meaning of New York Insurance Law §5102(d).

8. That infant Plaintiff **DANA BADKE** sustained serious injuries and economic loss greater than basic economic loss as defined by §5104 of the Insurance Law of the State of New York.

9. That as a result of the aforesaid occurrence, infant Plaintiff **DANA BADKE** has sustained damages in the amount of **ONE MILLION (\$1,000,000.00) DOLLARS** not including the costs and disbursements of this action.

#### **SECOND CLAIM**

10. That at all times hereinafter mentioned, Plaintiff **JOHN BADKE** repeats,

2

reiterates and realleges each and every allegation contained herein as though set forth at length herein.

11. That at all times hereinafter mentioned, Plaintiff **JOHN BADKE** was and is the father and natural guardian of infant Plaintiff, **DANA BADKE** and as such was entitled to the society, services of infant Plaintiff, **DANA BADKE**.



reiterates and realleges each and every allegation contained herein as though set forth at length herein.

11. That at all times hereinafter mentioned, Plaintiff **JOHN BADKE** was and is the father and natural guardian of infant Plaintiff, **DANA BADKE** and as such was entitled to the society, services of infant Plaintiff, **DANA BADKE**.

12. That by reason of the foregoing, Plaintiff **JOHN BADKE** was deprived of the society and services of the infant Plaintiff, **DANA BADKE** and shall be deprived of said society and services in the future.

13. That by reason of the foregoing, Plaintiff **JOHN BADKE** has sustained damages in the amount of **FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.**

**WHEREFORE**, infant Plaintiff **DANA BADKE** demands judgment against the Defendant **MARVEN WEIMAN** on the first claim in the sum of **ONE MILLION (\$1,00,000.00) DOLLARS**, and the Plaintiff **JOHN BADKE** demands judgment against the Defendant **MARVEN WEIMAN** on the second claim of action in the sum of **FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS**, each together with the costs and disbursements of this action

Dated: Hauppauge, New York  
December 6, 2007

Yours, etc.

JASON F ZIMMERMAN  
FELDMAN, KRAMER & MONACO, P.C.  
Attorneys for Plaintiff(s)  
330 Motor Parkway  
Hauppauge, New York 11788  
631-231-1450 – Ext. 218

### PLAINTIFF'S VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF SUFFOLK )

JOHN BADKE, being duly sworn, says:

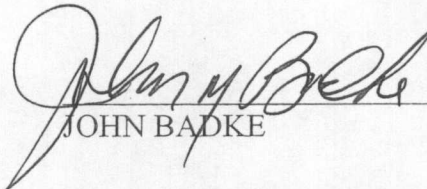
PLAINTIFF'S VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF SUFFOLK )

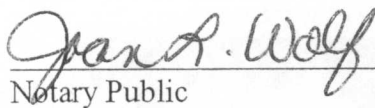
JOHN BADKE, being duly sworn, says:

I am a Plaintiff in the action herein: I have read the annexed **COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my personal files.

Dated: December 12, 2007

  
JOHN BADKE

Sworn to before me this  
12<sup>th</sup> day of December, 2007

  
Notary Public

JOAN L. WOLF  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01W06053325  
QUALIFIED IN SUFFOLK COUNTY  
MY COMMISSION EXPIRES 01-08-2011